

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

KELLY SHIPLEY,

Plaintiff,

v.

RELIASTAR LIFE INSURANCE
COMPANY,

Defendant.

Case No. 1:22-cv-00819-ADA-SAB

ORDER RE STIPULATION TO DISMISS
PLAINTIFF'S SECOND CAUSE OF
ACTION AGAINST DEFENDANT,
DEEMING COMPLAINT AMENDED

(ECF No. 13)

On September 20, 2023, the parties filed a stipulation agreeing to dismiss Plaintiff's second cause of action for insurance bad faith against Defendant with prejudice pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(ii). (ECF No. 13.) All other causes of action will remain active. (*Id.*)

The Ninth Circuit has held that Federal Rule of Civil Procedure 41(a)(1) cannot be used to dismiss individual claims against defendants, and that Rule 15 is the proper mechanism to do so. *See Hells Canyon Pres. Council v. U.S. Forest Serv.*, 403 F.3d 683, 687 (9th Cir. 2005) ("In the specific context of Rule 41(a)(1), we have held that the Rule does not allow for piecemeal dismissals. Instead, withdrawals of individual claims against a given defendant are governed by [Rule 15]."); *Ethridge v. Harbor House Rest.*, 861 F.2d 1389, 1392 (9th Cir. 1988) (holding a plaintiff cannot use Rule 41 "to dismiss, unilaterally, a single claim from a multi-claim complaint."); *but see Wilson v. City of San Jose*, 111 F.3d 688, 692 (9th Cir. 1997) ("The

1 Plaintiff may dismiss some or all of the defendants, or some or all of his claims, through a Rule
2 41(a)(1) notice.”). The Court finds it proper to construe the parties’ stipulation to dismiss the
3 individual cause of action as consent to amend the complaint under Rule 15 of the Federal Rules
4 of Civil Procedure. See Hells Canyon Pres. Council, 403 F.3d at 689 (“The fact that a voluntary
5 dismissal of a claim under Rule 41(a) is properly labeled an amendment under Rule 15 is a
6 technical, not a substantive distinction.”) (quoting Nilssen v. Motorola, Inc., 203 F.3d 782, 784
7 (Fed. Cir. 2000)). Therefore, the Court will give full effect to the parties’ stipulation through a
8 Rule 15 amendment.

9 Accordingly, IT IS HEREBY ORDERED that pursuant to the parties’ stipulation, the
10 Plaintiff’s complaint is DEEMED AMENDED and the second cause of action is no longer
11 alleged against Defendant.

12 IT IS SO ORDERED.

13
14 Dated: September 21, 2023


UNITED STATES MAGISTRATE JUDGE